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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-29

CORNING GLASS WORKS, A CORPORATION, PETITIONER

v.

PETER J. BRENNAN, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, pp. 24–44) is reported at 474 F. 2d 226. The opinions of the district court are reported at 319 F. Supp. 1161 (Pet. App. B, pp. 45–67) and 330 F. Supp. 46 (Pet. App. C, pp. 68–78).

JURISDICTION

The judgment of the court of appeals was entered on February 2, 1973. On April 18, 1973, Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to July 2, 1973. The petition for a writ of certiorari was filed on June 29, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the equal pay provisions of the Fair Labor Standards Act, 29 U.S.C. 206(d)(1), prohibit an employer from paying a higher base wage to night shift inspectors performing the same work as inspectors on the day shifts, where the higher base wage (1) was adopted to induce men to perform "female work" and (2) is paid in addition to a night shift bonus which is paid to all employees, regardless of sex, for night work.

2. Whether Corning cured any prior equal pay violations in June 1966 when, without changing the higher base wage paid to its night shift inspectors, it began to allow women to work on the night shift at the higher rates, while at the same time allowing men to work on the day shifts at the lower rates.

3. Whether Corning cured any prior equal pay violations in January 1969, when it established equal wage rates for inspectors on the day and night shifts, but at the same time raised the rates for the night shift inspectors then employed to a new higher level and "red circled" those rates, thereby continuing the differentials that had previously existed between day and night inspectors.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act, as amended by the Equal Pay Act of 1963, 77 Stat. 56, 29 U.S.C. 206(d)(1), are set forth in the petition at p. 3.

STATEMENT

This action was brought by the Secretary of Labor in the United States District Court for the Western District of New York to enjoin Corning Glass Works ("Corning") from paying lower wages to women inspectors employed at its glass works in Corning, New York, than it paid to men performing the same work, excluding wage differences attributable to contractual shift differentials.[1] The Secretary alleged that the wage differential discriminated against women inspectors on the basis of sex in violation of the equal pay provisions of the Fair Labor Standards Act, known as the Equal Pay Act (29 U.S.C. 206(d)(1)), and sought to restrain Corning from further violations of the Act and from withholding back pay due to women inspectors because of past violations.

Until June 1, 1966, except during World War II, women did most of the inspection work during the day shifts and only men did such work at night (Pet. App. B, pp. 50–52). When the practice of employing men inspectors at night was instituted, Corning did not pay shift differentials (Pet. App. A, p. 27). Nonetheless Corn-

[1] The Department of Labor has never challenged the lawfulness of "shift differentials," or differences in wages based on time of day worked. Thus Corning misses the point when it suggests (Pet. 9) that our position is at odds with Judge Friendly's common sense observation that "You'd have to pay me twice as much to work at night." Concededly it may be appropriate to pay night shift workers more than day shift workers. See 29 C.F.R. 800.145. Our contention is, instead, that the Equal Pay Act prohibits an employer from paying higher wages to men working the night shift solely because they are men.

ing historicaly paid its men night-shift inspectors a higher base wage than it paid to women inspectors.[2] When Corning adopted a plant-wide shift differential paid for all employees working at night, that differential was simply added to the higher base wage paid to men inspectors on the night shift (Pet. App. B, p. 51).

Corning denied that its concededly unequal wage rates were subject to the equal pay provisions of the Fair Labor Standards Act: specifically, Corning denied that otherwise identical work performed at night and during the day was work "performed under similar working conditions" as required for the application of the Equal Pay Act. Corning also contended that its night shift inspectors exerted greater effort than did the day and afternoon inspectors. Corning finally contended that, in any event, full compliance was achieved either in June 1966 when, without equalizing the day and night inspector wage rates, it allowed employees to work on any shift as vacancies occurred, regardless of their sex, or in January 1969 when it abolished separate base wage rates for day and night inspectors, but "red circled" the higher night shift rates for all employees then on night shift.

1. The practice of compensating men inspectors at higher base rates began between 1925 and 1930 when Corning started automating its glass works at

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[2] For example between 1967 and 1969 the higher base wage differential paid to men ranged between 17 and 20.5 cents per hour depending on the job classification involved (J.A. 264a–265a). During the period in question, the inspection classifications employed on all three shifts were ~~Inspector-Packer, Positioner-Inspector, Frost Light Inspector and Quality Inspector~~. Inspector Class B Inspector Class C and General TV inspector

Corning, New York. Prior to 1925, the inspection work had been done entirely by women who worked on both the day and afternoon shifts (Pet. App. B, p. 50). When automation brought around-the-clock production, Corning resorted to the use of men as inspectors on the night shift because New York law prohibited the employment of women between 10 p.m. and 6 a.m. (*ibid.*). Corning paid the men a higher wage, not, as it now contends (Pet. 4), to compensate them for working at night, but, as the courts below found and as its own witnesses testified, to induce the men to perform work "which they regarded as 'women's work'" and "demeaning" and, in addition, to assure the men the same wages they had received on their old jobs in the blowing room (Pet. App. A, p. 36; Pet. App. B, pp. 63–65; J.A. 64a–65a, 90a, 220a–221a, 228a).[3] Those wages were not less than 48 cents per hour, as compared to wages ranging from 24 to 28 cents per hour for the same work performed by the women during the day (Pet. App. A, p. 27). As one of Corning's witnesses candidly admitted, the men "just wouldn't work at the women's rate" (J.A. 228a, 231a).

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[3] Petitioner's reference to its pay practices during World War II (Pet. 4) does not substantiate its claim that the higher inspector rate was to compensate the men for working at night. The fact is that the higher rate was not paid to all women who worked on the night shift, but only to those who handled their own utility work (J.A. 42a–43a; Pet. App. B, pp. 50–51). That the higher rate for the men inspectors simply reflected their greater bargaining position is further confirmed by the fact that all "male only" jobs each carried the same base rate regardless of shift (Pet. App. A, pp. 36–37; Pet. App. B, pp. 64–65; J.A. 37a–38a, 111a–112a, 227a–231a).

Corning did not pay shift differentials as such until it was organized by a union in 1944 and required to do so by a collective bargaining agreement.[4] The first contract made no changes in Corning's existing base rate schedule (including those established for men and women inspectors), but it did require Corning to develop an equitable wage rate plan for all job classifications (Pet. App. B, p. 51; J.A. 91a–92a). Pursuant to this provision Corning adopted a job classification system developed by its consultants, Stevenson, Jordan & Harrison, the "SJ&H plan." The SJ&H plan described and evaluated the inspector jobs on the basis of "General schooling," "training period," "manual skill," "versatility," "job knowledge," "responsibility," and "working conditions" (J.A. 216a). Under this evaluation, the inspector jobs on all three shifts were found to be equal in all respects, including "working conditions" (J.A. 96a–97a), which were defined by the SJ&H plan as the "surrounding conditions" (wet, heat, cold, dust, grease, noises, etc.) and "hazard conditions" (bruises, cuts, heavy lifting, fumes, slippery floors, machine chemicals, gases, bodily injuries, etc.) to which employees are unavoidably subjected while performing their duties (J.A. 145a–146a). Time of day worked was not considered a "working condition" (J.A. 146a).

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[4] The 1944 union contract established shift differentials of 3 cents per hour for employees on the nonrotating afternoon shift and 5 cents per hour for those on the nonrotating night shift (Pet. App. B, p. 51; J.A. 91a–92a). These differentials, the validity of which we do not challenge, have since been increased to 10 and 16 cents per hour.

However, the SJ&H plan perpetuated the practice of paying lower wages to women, since it provided that men's wage rates were to be established by multiplying the plan's rating factor for a job by the prevailing rate for unskilled male labor, whereas women's wages were calculated by multiplying this factor by the lower prevailing rate for unskilled female labor (J.A. 154a–155a, 212a–216a).[5]

These differentials between men and women were maintained, not only in each succeeding union contract, but also when Corning re-evaluated the jobs under the Corning Glass Works (CGW) plan in 1963 and 1964. The CGW plan, like the SJ&H plan, defined "working conditions" as a job's physical surroundings and hazards; it did not include the time of day worked (J.A. 40a–41a, 121a–122a, 145a–146a, 154a–156a). The CGW plan found that the skill, effort, responsibility and working conditions (as so defined) were the same for inspectors on each shift (J.A. 96a–97a, 175a–186a, 199a–206a).

Following enactment of the Equal Pay Act on June 10, 1963, Corning distributed an intra-company memorandum which described the wage schedules based on the SJ&H plan as "discriminatory" (J.A. 253a). Despite this memorandum, petitioner made no changes in its wage structure other than to merge into a single wage schedule the separate "male" and "female" wage schedules which had been set up under the SJ&H

[5] Under this formula, the maximum male rates for the inspection work were 85 and 95 cents per hour whereas the maximum female rates were 69 and 77 cents per hour (J.A. 236a–237a).

plan. The single schedule, however, preserved the same differentials that had previously existed between the men and women inspectors by placing the women into a lower labor grade on the revised rate schedule with a lower rate of pay (Pet. App. A, pp. 28–29; J.A. 112a, 222a–226a).

On June 1, 1966, Corning merged its separate seniority lists for males and females, and, since that time, women have been permitted to exercise their seniority to obtain jobs on the night shift (J.A. 32a, 40a, 94a–95a). However, women inspectors were not allowed to bump less senior men inspectors employed on the higher paying night shift. Instead, the women had to fill out transfer requests and wait for vacancies (J.A. 40a). Of the 15 women who requested night shift work in 1966, only four were offered such work; in 1967, 61 women requested night work and 39 received offers; and in 1968, 52 women sought night work and 42 received offers (Pet. App. A, p. 29, n. 6; Pltf's Exh. 93, pp. 5, 10).[6] Also, as the trial court noted, some men took inspector jobs on the day and afternoon shifts at the lower base hourly wage rates which those jobs carried (Pet. App. B, p. 54).

The final change instituted by Corning occurred on January 20, 1969, when it abolished its separate base wage rates for day and night shift inspectors and established the same wage rate for all three shifts Pet. App. A, p. 41). At the same time, however, through the device of retroactive wage increases, Corning

[6] Plaintiff's Exhibit 93 was not reproduced in the joint appendix, but a xerox copy has been lodged with the Clerk.

raised the rates for its night shift inspectors to higher levels than those established under its new job evaluation plan and "red circled" these rates, thereby continuing the differentials that had previously existed between day and night inspectors (Pet. App. C, pp. 70–71, 77–78, n. 4; J.A. 266a–268a). At the time of the May 10, 1971, hearing, there were no newly hired employees on the night shift, so all inspectors on it were receiving the higher or "red circled" rate.

2. *a.* The courts below concluded that Corning violated the equal pay provisions of the Fair Labor Standards Act by paying a higher base wage to men inspectors on the night shift performing the same work as women inspectors during the day, where the higher base wage was paid in addition to a regular night shift bonus. The courts rejected Corning's contention that similar work performed at night and during the day was not within the Act's definition of equal work, because it was not work "performed under similar working conditions." The court of appeals explained that while Corning's contention "would indeed seem to be true" "[t]o those uninitiated in the language of industrial relations" (Pet. App. A, p. 32), it is clear from the "legislative history * * * that the time at which work is performed was not regarded as a 'working condition' but rather as a proper subject for 'a differential based on any other factor other than sex'" (*ibid.*). As pointed out by the court, the term "similar working conditions" was added to the Act's definition of "equal work" only after a Corning expert urged Congress to adopt the formulation used in most

job classification systems, including Corning's, which "[u]nder 'working conditions' * * * listed two factors: 'surroundings' * * * and 'hazards'" (Pet. App. A, pp. 32–33).

Both courts also ruled that the higher base rates of petitioner's men inspectors could not be justified under the "factor other than sex" exception. As the court of appeals commented, "[t]he plain fact is that the differentials here at issue arose because men would not work at the low rates paid the women day-time inspectors to perform what the men called 'female work.' This is the very condition at which the Equal Pay Act was aimed" (Pet. App. A, p. 37).

b. The courts below rejected petitioner's contention that any equal pay violations on its part were cured when the night shift was opened to women. As the court of appeals explained, "Congress was quite specific * * * that an employer paying a wage differential violative of the Act should cure the violation by raising the wage rates of the women" (Pet. App. A, pp. 39–40). "In light of this apparent congressional understanding, we cannot hold that Corning, by allowing some—or even many—women to move into the higher paid night jobs, achieved full compliance with the Act. Corning's action still left the inspectors on the day shift—virtually all women—earning a lower base wage than the night shift inspectors because of a differential initially based on sex and still not justified by any other consideration * * *" (Pet. App. A, p. 40).

c. Although the district court originally held for petitioner on Question 3, it reversed itself at a sub-

sequent hearing and ruled that petitioner's January 20, 1969, agreement with the union—which established a higher "red circle" rate for night shift inspectors hired before January 20, 1969—unlawfully "perpetuates the [prior] discrimination" (Pet. App. C, p. 74). The court of appeals agreed, pointing out that night shift inspectors hired before January 20, 1969, still "receiv[e] a *basic rate* * * * some four to twelve cents per hour higher than [the basic rate] for the day and afternoon shifts" (Pet. App. A, p. 41; emphasis added).

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED LIMITED TO QUESTION 1

The principal question presented in this case is whether the Equal Pay Act prohibits Corning from paying a higher base wage to night shift inspectors performing the same work as inspectors on the day shifts, where the higher base wage (1) was adopted to induce men to perform "female work" and (2) is paid in addition to the contractual differential regularly paid for night work. We believe the court below correctly decided that Corning's wage rates were in violation of the Equal Pay Act. However, the decision below is in direct conflict with the conclusion of the Third Circuit on the same issue between the same parties.[7] The conflict creates uncertainty not only

[7] The government has filed a petition for a writ of certiorari in the Third Circuit case (*Brennan* v. *Corning Glass Works*, No. 73-695), but suggests on p. 15 of the petition that the Court postpone disposition of that petition pending its decision in the present case.

for the present parties (there is yet another equal pay case pending against Corning in Rhode Island, Civ. No. 4036, D.R.I.) but also for the numerous industries which, like Corning, operate on a 24-hour basis and, until recently, have restricted their night shift to men. See, *e.g.*, *Shultz* v. *American Can Company-Dixie Products*, 424 F. 2d 356 (C.A. 8); *Hodgson* v. *Miller Brewing Company*, 457 F. 2d 221 (C.A. 7); *Hodgson* v. *San Diego Unified School District*, 71 CCH Lab. ¶ 32,920 (S.D. Calif., 1973), pending on appeal, No. 72–2805 (C.A. 9). We therefore believe that certiorari should be granted limited to this question (Question 1).

The Secretary does not question Corning's right to pay higher wages to its employees who work undesirable night hours. The Equal Pay Act regulations explicitly recognize the legitimacy of Judge Friendly's observation during the argument on appeal that "You'd have to pay me twice as much to work at night." See 29 C.F.R. 800.145. What the Secretary does challenge is Corning's right to maintain a wage differential which, although paid to certain employees working on the night shift, is unrelated to that fact, having its origin in sex, and which is being paid *in addition* to the shift differential paid to all employees, regardless of sex, working undesirable night hours.

Neither the Second nor the Third Circuit questioned the propriety of maintaining a wage differential based upon the time of day worked. The courts differed, however, on whether "time of day worked" is a "working condition" or a "factor other than sex" justifying a wage difference. We believe that the Second Circuit's "persuasive explanation of how the bill took

shape" (Pet. App. A, pp. 32–34) demonstrates that the term "working condition" was intended to encompass physical surroundings and hazards, not time of day worked.

However, we believe the Act applies in the circumstances of this case under either reading of these statutory terms. The court below went to the heart of the matter in stating (Pet. App. A, p. 37):

> The plain fact is that the differentials here at issue arose because men would not work at the low rates paid the women daytime inspectors to perform what the men called "female work." This is the very condition at which the Equal Pay Act was aimed.

A higher wage paid to men to do what they called "female work"—which the Act forbids—does not become lawful simply because the men work at night. Of course workers may be paid more for night work—and, since 1944, Corning has maintained a shift differential to do just that. But the wage differential the Secretary challenges has nothing to do with the fact that the work is at night: it began as an increment to men to do "female work" and was simply added on to shift differentials when they were instituted in 1944. It has been carried forward in each collective bargaining agreement and exists today as the "red circle" rates for night shift workers employed before January 20, 1969.

Thus, regardless of whether "time of day worked" is a "working condition" or a "factor other than sex," the wage differential challenged here is not the one based on time of day worked (*i.e.*, the shift differential), but another separate and additional differential

having its origins in considerations of sex. As the district court observed (quoting *Wirtz* v. *Dennison Manufacturing Company*, 265 F. Supp. 787, n. 1 (D. Mass.)), "this element (working less desirable night shift) appears to have been taken care of by the fact that the men received an additional allowance over and above the basic rate under the company's regularly established differential for night work" (Pet. App. B, p. 62).

While we believe the courts below correctly decided this issue,[8] in light of the conflict between the Second and Third Circuits, we respectfully suggest that certiorari be granted limited to this question.

II. CERTIORARI SHOULD BE DENIED WITH RESPECT TO QUESTIONS 2 AND 3

The remaining issues raised by Corning do not merit further review by this Court.

1. Corning's principal remaining contention is that it cured any prior violations of the Act on June 1, 1966, when it began to allow women to exercise their seniority to bid for jobs on the night shift, as vacancies occurred. While we acknowledge the importance of the question, we submit that it does not warrant review by this Court, because the contention has been correctly and uniformly rejected by all the courts of appeals which have considered the issue. As the court below said (Pet. App. A, p. 40):

> We thus join every other court of appeals which has considered the issue in holding that merely

[8] Our arguments are set forth more fully on pp. 13–14 of our petition in No. 73–695.

> opening the higher paid jobs to women as vacancies arise is not sufficient to comply with the requirements of the Equal Pay Act.

See *Shultz* v. *American Can Company, supra,* 424 F. 2d 356 (C.A. 8); *Hodgson* v. *Square D Company,* 459 F. 2d 805, 808 (C.A. 6), certiorari denied, 409 U.S. 967; *Hodgson* v. *Miller Brewing Company, supra,* 457 F. 2d at 226–227; *Shultz* v. *Saxonburg Ceramics, Inc.,* 314 F. Supp. 1139, 1146 (W. D. Pa.).[9]

The Equal Pay Act was designed "to correct * * * depress[ed] wages and living standards" caused by "wage differentials based on sex * * *." Equal Pay Act, Section 2, 77 Stat. 56. The Act achieves this purpose by requiring an employer paying discriminatory wages to women to raise the women's wage rates to the same level as that for men performing equal work. This requirement is expressed in the proviso of 29 U.S.C. 206(d)(1):

> *Provided,* that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

Corning's attempt to remedy its equal pay violations by opening the night and day shifts to all employees as vacancies occurred, not only failed "to correct * * * [the] depress[ed] wages and living standards" of the

[9] Petitioner attempts to distinguish *Square D* and *American Can* on the ground that "the women had not actually been able to work on the [newly opened male] jobs" (Pet. 18), but this was not the basis for either decision. The controlling principle in each case was that the women were entitled to the higher male rate for the work they were already performing, since it was equal to the work of the men.

women employees, but also "drag[ged] down men workers [who took daytime jobs] to the wage levels of women," contrary to the express intent of Congress (109 Cong. Rec. 2714, 9196, 9210).[10]

Finally, there is no merit in Corning's claim that the decision below conflicts with the intent of "Congress * * * to afford maximum flexibility to the collective bargaining system in adjusting rate relationships" (Pet. 18–19). While the Act does not interfere with matters which are the legitimate subject of collective bargaining, it was recognized repeatedly during the debates on the equal pay provisions that unions may seek to enter into discriminatory agreements (109 Cong. Rec. 9198–9199, 9209; 108 Cong. Rec.

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[10] In arguing that it cured any violations by opening the higher paying jobs to women, Corning apparently confuses the purpose of the Equal Pay Act with those of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, which is expressly concerned with job availability. In this vein Corning incorrectly suggests (Pet. 19) that the decision below conflicts with a decision under Title VII, *United States* v. *Jacksonville Terminal Company*, 451 F. 2d 418 (C.A. 5), certiorari denied, 406 U.S. 906. But there jobs made available to blacks were not "equal" to any jobs which blacks had previously performed. Here, by contrast, the women have always performed work which was "equal" to that performed by the men and were therefore entitled to the higher rate regardless of whether they ever transferred to the night shift.

Similarly, in relying on a New York statute, repealed in 1953, prohibiting the employment of women at night Corning continues to confuse the separate requirements of Title VII and the Equal Pay Act (Pet. 19–20). Even if such a protective statute insulated an employer from any liability for excluding women from the night shift, it would not justify the payment of unequal wages for equal work. See, *e.g.*, *Shultz* v. *Wheaton Glass Company*, 421 F. 2d 259, 263, n. 5 (C.A. 3), certiorari denied, 398 U.S. 905.

14751–14752). It was for this reason that Congress enacted Section 6(d)(2), 29 U.S.C. 206(d)(2), which specifically prohibits labor organizations from causing or attempting to cause an employer to discriminate in violation of the Act. The rights to equal pay for equal work, like the rights assured by Title VII, "are not rights which can be bargained away—either by a union, by an employer, or by both acting in concert." *Robinson* v. *Lorillard Corp.*, 444 F. 2d 791, 799 (C.A. 4), certiorari dismissed, 404 U.S. 1006, and cases therein cited.

2. The courts below were also correct in holding that the "red circle" rates established by petitioner's January 20, 1969, agreement with the union "perpetuate the [prior] discrimination," since they continued the wage differentials which were based on sex. This holding accords with the numerous Title VII decisions striking down practices which, although "neutral on their face, and even neutral in terms of intent, * * * operate to 'freeze' the status quo of prior discriminatory employment practices." *United States* v. *Bethlehem Steel Corp.*, 446 F. 2d 652, 659 (C.A. 2). See *Griggs* v. *Duke Power Company*, 401 U.S. 424; *Robinson* v. *Lorillard Corp.*, *supra*, 444 F. 2d at 799.

CONCLUSION

There is a conflict in the Circuits on the issue presented by Question 1: whether the Equal Pay Act prohibits an employer from paying a higher base wage to male night shift inspectors performing the same work as female inspectors on the day shifts, where the higher

base wage (1) was adopted to induce men to perform "female work" and (2) is paid in addition to the regular shift differential for night work. Questions 2 and 3 were correctly decided by the court below and present no conflict. We therefore respectfully suggest that certiorari be granted, limited to Question 1.

ROBERT H. BORK,
Solicitor General.

WILLIAM J. KILBERG,
Solicitor of Labor,
CARIN ANN CLAUSS,
Associate Solicitor,
SYLVIA S. ELLISON,
HELEN W. JUDD,
Attorneys,
Department of Labor.
NOVEMBER 1973.

U.S. GOVERNMENT PRINTING OFFICE: 1973

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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-695

PETER J. BRENNAN, Secretary of Labor,
Petitioner,

v.

CORNING GLASS WORKS, a Corporation,
Respondent.

MEMORANDUM FOR THE RESPONDENT

SCOTT F. ZIMMERMAN,
747 Union Trust Building,
Pittsburgh, Pennsylvania 15219,
Attorney for Respondent.

WALTER P. DEFOREST,
Reed Smith Shaw & McClay,
747 Union Trust Building,
Pittsburgh, Pennsylvania 15219.

ROBERT F. COX,
Cox, Wilcox, Owlett & Lewis,
19 Central Avenue,
Wellsboro, Pennsylvania 16901.

BATAVIA TIMES, APPELLATE COURT PRINTERS,
EDWARD W. SHANNON, REPRESENTATIVE,
1701 PARKLINE DR., PITTSBURGH, PA. 15237
412-881-7463

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MISCELLANEOUS:

Petition for Writ of Certiorari in *Corning Glass Works v. James D. Hodgson,* Docket No. 73-29 (U. S. Sup. Ct., filed June 29, 1973) 2, 3

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-695

PETER J. BRENNAN, Secretary of Labor,
Petitioner,

v.

CORNING GLASS WORKS, a Corporation,
Respondent.

MEMORANDUM FOR THE RESPONDENT

Opinions Below

The opinion of the court of appeals (Pet. App. A, pp. 1a-16a) is reported at 480 F.2d 1254. The opinion and supplemental findings of the district court are reported at 341 F.Supp. 18 (Pet. App. C, pp. 18a-39a).

Jurisdiction

The judgment of the court of appeals was entered on June 28, 1973 (Pet. App. B, p. 17a). On September 17, 1973, Mr. Justice Brennan extended the time within which to file a petition for a writ of certiorari to and including October 26, 1973. The Petition for a Writ of Certiorari was filed on October 26, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented

Whether work at night is performed under a "working condition" similar to work during the day within the meaning of the equal pay provisions of the Fair Labor Standards Act.

Statute Involved

The pertinent provisions of the Fair Labor Standards Act, as amended by the Equal Pay Act of 1963, 77 Stat. 56, 29 U.S.C. § 206(d)(1), are set forth in the Petition at pp. 2-3.

Statement

Although Respondent does not entirely agree with the statement of the case presented in the Petition for a Writ of Certiorari as it pertains to the merits of the dispute presented for review, insofar as it is relevant to the question of whether certiorari should be granted Petitioner's statement is adequate (Pet., pp. 3-10).

Conclusion

We agree with Petitioner that the question presented by Question No. 1 of Respondent's Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit in *Corning Glass Works v. James D. Hodgson*, Docket No. 73-29 (U. S. Sup. Ct., filed June 29, 1973), which is now ready for consideration by this Court, should be resolved by this Court. Should this Court grant certiorari in No. 73-29 Respondent would not oppose the granting of certiorari in the instant case. Respondent does not agree with the position of Petitioner herein that this Court's grant of certiorari in No. 73-29 should be limited to Question No. 1 of that Petition but contends,

for the reasons set forth in pp. 8-22 of that Petition, that certiorari should be granted with respect to each of the three questions presented for review in that Petition.

In the event that this Court should determine that certiorari should not be granted in No. 73-29, Respondent respectfully suggests that certiorari should not be granted in the instant case.

Respectfully submitted,

SCOTT F. ZIMMERMAN,
747 Union Trust Building,
Pittsburgh, Pennsylvania 15219,
Attorney for Respondent.

WALTER P. DEFOREST,
Reed Smith Shaw & McClay,
747 Union Trust Building,
Pittsburgh, Pennsylvania 15219.

ROBERT F. COX,
Cox, Wilcox, Owlett & Lewis,
19 Central Avenue,
Wellsboro, Pennsylvania 16901.